

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RICHARD J. TESTA, JR., individually, and on
behalf of all others similarly situated,

Plaintiff,

- against -

MERRILL LYNCH, PIERCE, FENNER &
SMITH, INC., JOHN DOES 1-50 (said names
being fictitious individuals), and ABC
CORPORATIONS 1-50 (said names being
fictitious companies, partnerships, joint ventures
and/or corporations),

Defendants.

Civil Action No. 07 CV 8320 (AKH)

ECF Case

STATUS REPORT

In connection with efforts to resolve this and several other actions asserting similar claims against defendant Merrill Lynch, Pierce, Fenner & Smith, Incorporated, the parties have stipulated to, and this Court entered, an order staying all proceedings in this action and providing that the parties should file a report on or before July 31, 2008, to update the Court on the status of their settlement efforts.

This status report is submitted in accordance with the Court's directive. As previously reported, the parties executed a memorandum of understanding reflecting their agreement to settle the matters and drafted and executed other settlement papers, including a settlement stipulation. The parties are currently in the final stages of considering settlement documents that would require application to the District of Oregon for preliminary, and then final, approval of a nationwide class and collective action settlement. Although, as the last status report stated, certain issues had recently been raised by some of the plaintiffs' counsel, that might preclude a settlement at this time, the parties appear to be working through those issues

and are hopeful that they will be resolved. It should become clear in the next few weeks whether these issues can be resolved and the proposed settlement can go forward.¹

Accordingly, the parties respectfully request that all proceedings in this matter continue to be stayed so that they can determine whether certain final issues relating to the proposed settlement can be resolved. The parties propose that they report back to the Court regarding status on or before September 15, 2008.

Dated: August 1, 2008

By: /s/

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¹ Nothing in this submission is intended to create or affect any right to withdraw or contest withdrawal from the Settlement.

Dated: August 1, 2008

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